

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

3 NORTH CAROLINA STATE) CASE NO. 1:18CV1034
4 CONFERENCE OF THE NAACP, et al.)
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9 TRANSCRIPT OF THE **TELEPHONIC STATUS CONFERENCE**
10 BEFORE THE HONORABLE LORETTA C. BIGGS
11 UNITED STATES DISTRICT JUDGE

12 APPEARANCES: (By Telephone)

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NAACP v. Cooper -- Status conference -- 9/17/21

1 P R O C E E D I N G S

2 **THE COURT:** Good morning to all. This is Judge
3 Biggs. How is everybody this morning?

4 All right. Why don't we do this. Why don't I have
5 Plaintiffs tell me who is on the line, and then we'll do the
6 same with Defendants.

7 **MS. SWAIN:** Good morning, Your Honor, Caitlin Swain
8 on the line for the Plaintiffs. With me this morning is Irving
9 Joyner, John Ulin, and Jeremy Karpatkin.

10 **THE COURT:** Thank you.

11 Let me hear from Defendants.

12 **MR. STEED:** Good morning, Your Honor. This is
13 Terence Steed for the Defendants. I also have Laura McHenry on
14 the line.

15 **THE COURT:** All right. Thank you.

16 I asked that we come together because I wanted to
17 make sure we were all on the same page with respect to this
18 matter going to trial and to find out from you what you
19 anticipate as the length of the trial and whether or not you
20 would have witnesses that would be testifying remotely.

21 So why don't we start with the trial date.

22 Currently, the trial is scheduled for the January master trial.
23 However, because I am not on that master calendar, I have
24 removed it. Now, I do have a week in January that I can try
25 this case, which is the week of January 24th.

1 The only other alternative we have -- I am on the
2 master calendar during the month of April and May, actually,
3 but I'm thinking that that is too close to the election next
4 year, that you would perhaps to want to get this done in
5 January.

6 So let me hear first from Plaintiffs.

7 **MS. SWAIN:** Yes, Your Honor. The Plaintiffs'
8 position would be that we would not want to push the trial to
9 the April or May date master calendar for the exact reasons
10 that you stated. Our concern would be that would place us too
11 close to the election for a final judgment in this matter.

12 I will foreshadow that our estimate -- Plaintiffs'
13 estimate of time necessary for our case was closer to eight
14 days, looking at around 50 hours of evidence, including
15 cross-examination. But, of course, we would -- our strong
16 preference would be to move forward with the time that the
17 Court has available for us in that January time period.

18 **THE COURT:** So this is very different than you
19 actually put in your filings. I understood that both attorneys
20 had indicated a trial length of five days. Is that not
21 correct?

22 **MS. SWAIN:** Yes, Your Honor, you are absolutely
23 correct. In our 26(f) filings, that was our estimate. In
24 light of the Fourth Circuit's decision, we have -- we had
25 estimated additional evidence time to be able to give Your

1 Honor the full breadth of evidence that we believe the Court
2 may require, but we also understand that those were -- that was
3 our initial estimate. You are correct.

4 **THE COURT:** All right. So you anticipate that your
5 side of the case, your presentation of evidence, would be eight
6 days. Is that what you're telling me?

7 **MS. SWAIN:** Yes, Your Honor, including opening and
8 closing as well as our estimates, which are obviously rough, as
9 to cross-examination of any witnesses that Defendants plan to
10 put on.

11 **THE COURT:** All right. We will do a trial protocol,
12 and I am going to ask in that protocol that you set forth each
13 of your witnesses as well as estimations of time for direct as
14 well as cross, but we'll get to that later.

15 Let me hear from Defendants at this point in terms of
16 your thinking about the presentation of your evidence.

17 **MR. STEED:** Thank you, Your Honor, Terence Steed for
18 the Defendants.

19 Just to go back there, just so everyone is aware, the
20 2022 statewide primary is scheduled for March 8, 2022. I would
21 guess that wouldn't really matter either for January or a later
22 trial date since this is a bench trial, and I wouldn't expect a
23 ruling from the bench or anything while we're on trial.

24 As far as our presentation, I don't believe that has
25 changed for us on the 26(f) filings. We would estimate two

1 days at the outside probably. It's possible we could be done
2 in one day. Two days would probably be including our
3 cross-examination time and our witnesses. It's possible we
4 would need three if Plaintiffs' case became more expansive than
5 we expected and required us to bring in other witnesses; but as
6 for now, two days is the ballpark of where we would be.

7 **THE COURT:** All right. Let me ask my case manager
8 what that following week looks like for me. When do we
9 actually begin the criminal term?

10 **COURTROOM DEPUTY CLERK:** We begin the criminal term
11 the first week of December 6th.

12 **THE COURT:** No, no, no. I mean for February.

13 **COURTROOM DEPUTY CLERK:** I'm sorry. It will begin
14 February 7th.

15 **THE COURT:** February 7th. Okay. So let me look at
16 my calendar here.

17 All right. It looks like if we leave it with that
18 additional time, I do have it. I am bumping up against my
19 criminal term, but it makes sense to me for us to move forward
20 with this in January in light of all that we'll have going on
21 next year. So why don't we plan to begin this trial on the
22 24th, on January the 24th. And you will receive notice of
23 that.

24 Now, in terms of -- at this point I don't know what
25 our COVID situation will be. I have done a number of bench

1 trials during COVID, and we do have protocols in place, which
2 would mean that we would limit the number of folks in this
3 courtroom as best we could as well as, of course, practicing
4 social distancing and masking.

5 I don't know if you have -- if either side has
6 witnesses that you would ask testify via a video link versus
7 being personally in court due to travel.

8 Why don't we start with Plaintiffs. Are you aware of
9 those kind of circumstances at this point --

10 **MS. SWAIN:** Your Honor --

11 **THE COURT:** -- if we have to deal with COVID
12 protocols?

13 **MS. SWAIN:** Yes, Your Honor. We do have at least two
14 expert witnesses who are out of state. If we have a COVID
15 protocol in place that would give them the option of being able
16 to testify remotely, if necessary, we would appreciate that;
17 but we have asked all of our witnesses to be prepared for an
18 in-person proceeding at this time.

19 **THE COURT:** All right. Let me hear from Defendants.

20 **MR. STEED:** Your Honor, our witnesses will be coming
21 from in state here in Raleigh, so I don't think we would
22 anticipate any problem with them being in person. And, I mean,
23 just from a personal preference, I would prefer in-person
24 rather than remote witnesses, if possible.

25 **THE COURT:** All right. Now, let me ask you if it

1 would -- I don't know if you're going to ask me at some point
2 not to require a mediation. We can resolve that today if
3 anyone cares to be heard on that issue.

4 **MR. STEED:** I would imagine that, short of Plaintiffs
5 dismissing their case, we're probably not going to resolve this
6 particular one in settlements.

7 **THE COURT:** That's my guess, but I don't want to -- I
8 want to give you that opportunity if you wish to have that
9 opportunity.

10 **MS. SWAIN:** Yes, Your Honor. I think Plaintiffs
11 understand that requiring a mediation would likely be a waste
12 of the parties' time at this juncture and the Court's.

13 **THE COURT:** All right. So we won't go through that
14 exercise.

15 Are there issues -- I don't see any pending motions
16 that we need to address prior to trial. Now, I know you could
17 file some motions in limine, and we'll address those as they
18 come about.

19 But are there other issues that we need to address at
20 this time?

21 **MR. STEED:** As you know, we did seek leave to file a
22 late motion for summary judgment and Magistrate Judge Auld
23 denied that, but did point us towards Local Rule 56.1(g). It
24 is Defendants' intention at this time to file a late motion for
25 summary judgment by the end of this month. So we're just

1 flagging that for Your Honor. We do understand the protocols
2 and procedures under 56.1(g). We're just letting you know we
3 do intend to file it.

4 **THE COURT:** All right. Do Plaintiffs care to be
5 heard as it relates to that?

6 **MS. SWAIN:** Your Honor, we have briefed -- we briefed
7 this matter in our opposition to the untimely motion. You
8 know, we do believe that this is -- not only would this motion
9 delay -- create unnecessary delay and prejudice if the Court
10 were to determine that it needed to be litigated prior to
11 trial, but also that it -- just the matters of this case are
12 highly fact intensive and not amenable to disposition by a
13 summary judgment.

14 So we would be happy to be -- to -- I mean, I'm happy
15 to share more on that if the Court wants to hear more of our
16 position today, but it's the same position that we already
17 briefed.

18 **THE COURT:** All right. Well, if something comes
19 before me, I will address it appropriately, and we'll move
20 forward. There is -- I will not allow any movement of this
21 trial, and so I ask that all parties be prepared to move
22 forward on January the 24th.

23 Are there other issues that either side cares to
24 address with me at this time?

25 That concludes my issues. I just didn't want there

1 to be any misunderstanding about when this trial would be
2 heard.

3 **MS. SWAIN:** None from Plaintiffs, Your Honor.

4 **MR. STEED:** And none from the Defendants, Your Honor.

5 **THE COURT:** All right. Well, I appreciate you taking
6 the time this morning. We will proceed in going to trial. You
7 will receive notice and notice of all filings that filing
8 deadlines require.

9 Are there -- there appear to be no other issues that
10 we need to address at this time. So I look forward to seeing
11 you as we begin trial in this matter.

12 **MS. SWAIN:** Thank you very much, Your Honor.

13 **MR. STEED:** Thank you very much, Your Honor.

14 **THE COURT:** All right. Conclude this call, please.

15 (END OF PROCEEDINGS AT 10:15 A.M.)

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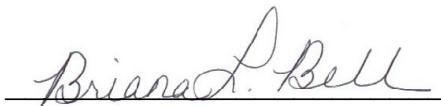
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1 UNITED STATES DISTRICT COURT
2 MIDDLE DISTRICT OF NORTH CAROLINA
3 CERTIFICATE OF REPORTER

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6 I, Briana L. Bell, Official United States Court
7 Reporter, certify that the foregoing transcript is a true and
8 correct transcript of the proceedings in the above-entitled
9 matter prepared to the best of my ability.

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11 Dated this 1st day of October 2021.
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15 Briana L. Bell, RPR
Official Court Reporter
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